



April 3, 2009

ENGROSSED HOUSE BILL No. 1372

DIGEST OF HB 1372 (Updated April 1, 2009 1:44 pm - DI 87)

Citations Affected: IC 36-12.

Synopsis: Library services authorities; library cards. Allows a library services authority to merge with another authority or a nonprofit corporation, or both, to create a nonprofit corporation. Provides for a free or reduced fee library card for a student who is not a resident of a library district but is enrolled in a nonpublic school located at least in part in the library district. (Current law allows a free or reduced fee library card for a student who is not a resident of a library district only if the student is enrolled in public school corporation located at least in part in the library district.)

Effective: Upon passage; July 1, 2009.

Blanton

(SENATE SPONSORS — GARD, DEIG)

January 13, 2009, read first time and referred to Committee on Small Business and Economic Development.

February 12, 2009, reported — Do Pass.

February 16, 2009, read second time, amended, ordered engrossed.

February 17, 2009, engrossed. Read third time, passed. Yeas 94, nays 0.

SENATE ACTION

February 19, 2009, read first time and referred to Committee on Local Government.

April 2, 2009, amended, reported favorably — Do Pass.

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EH 1372—LS 7315/DI 109+



April 3, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1372

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 36-12-2-25, AS ADDED BY P.L.1-2005,
2 SECTION 49, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 25. (a) The residents or real property taxpayers of
4 the library district taxed for the support of the library may use the
5 facilities and services of the public library without charge for library or
6 related purposes. However, the library board may:
7 (1) fix and collect fees and rental charges; and
8 (2) assess fines, penalties, and damages for the:
9 (A) loss of;
10 (B) injury to; or
11 (C) failure to return;
12 any library property or material.
13 (b) A library board may issue local library cards to:
14 (1) residents of the library district; or
15 (2) Indiana residents who are not residents of the library district;
16 who apply for the cards.
17 (c) Except as provided in ~~subsection~~ **subsections** (d) and (e), a

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library board must set and charge a fee for a local library card issued under subsection (b)(2). The minimum fee that the board may set under this subsection is the greater of the following:

(1) The library district's operating fund expenditure per capita in the most recent year for which that information is available in the Indiana state library's annual "Statistics of Indiana Libraries".

(2) Twenty-five dollars (\$25).

(d) A library board may charge a reduced fee or not charge a fee for a local library card under subsection (c) that is issued to an Indiana resident who is:

(1) a student enrolled in a public school corporation that is located at least in part in the library district; and

(2) not a resident of the library district.

(e) A library board may charge a reduced fee or not charge a fee for a local library card under subsection (c) that is issued to an Indiana resident who is a student enrolled in a nonpublic school that is located at least in part in the library district.

SECTION 2. IC 36-12-8.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 8.5. Library Services Authorities; Conversion Into Nonprofit Corporation

Sec. 1. The definitions in IC 36-12-8 apply to this chapter.

Sec. 2. As used in this chapter, "authority" refers to a library services authority established under IC 36-12-8.

Sec. 3. As used in this chapter, "plan" refers to a plan of merger.

Sec. 4. This chapter applies to the following entities:

(1) An authority.

(2) A domestic nonprofit corporation that merges with an authority under this chapter.

Sec. 5. An authority may merge under this chapter with:

(1) one (1) or more other library services authorities;

(2) a domestic nonprofit corporation; or

(3) both:

(A) one (1) or more other library services authorities; and

(B) a domestic nonprofit corporation;

to form a domestic nonprofit corporation and gain the rights, privileges, immunities, and franchises available under IC 23-17.

Sec. 6. (a) A merger and conversion into a domestic nonprofit corporation under this chapter must be:

(1) proposed by the executive committee of an authority by a

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1 resolution of merger and conversion; and
 2 (2) adopted by the affirmative vote of at least two-thirds (2/3)
 3 of the qualified and acting voting members of the executive
 4 committee physically present at a meeting at which a quorum
 5 is present.

6 The resolution of merger and conversion required under this
 7 subsection must include the plan of merger between the authority
 8 and the surviving corporation.

9 (b) A plan of merger included in a resolution of merger and
 10 conversion under subsection (a) must include the following:

11 (1) The name of:

12 (A) each entity planning to merge; and

13 (B) the surviving corporation into which the entities plan
 14 to merge.

15 (2) The terms and conditions of the planned merger and
 16 conversion.

17 (3) The manner and basis, if any, of converting the
 18 memberships in the authority into memberships in the
 19 surviving corporation.

20 (c) A plan may include the following:

21 (1) Amendments to, or a restatement of, the articles of
 22 incorporation or bylaws of the surviving corporation.

23 (2) Other provisions relating to the planned merger and
 24 conversion.

25 (3) A delayed effective date.

26 (d) For a merger under this chapter to be completed, the plan of
 27 merger, in addition to being approved under subsection (a), must
 28 be approved as follows:

29 (1) The plan must be approved by the affirmative vote of:

30 (A) at least two-thirds (2/3) of the qualified and acting
 31 members of the board of directors; and

32 (B) at least two-thirds (2/3) of the members;

33 of the domestic nonprofit corporation that will be the
 34 surviving corporation after the merger. If the corporation
 35 that will be the surviving corporation is being formed for
 36 purposes of the merger, the approval under this subdivision
 37 must be given after the formation of the corporation.

38 (2) The plan must also be approved by the affirmative vote of
 39 at least two-thirds (2/3) of the qualified and acting members
 40 of the board of directors of the authority who are present in
 41 person or by proxy at a meeting of the board of directors of
 42 the authority at which a quorum is present.

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(e) If the board of directors of the corporation that will be the surviving corporation after the merger seeks to have the plan approved by the members of the corporation at a membership meeting, the corporation shall give notice of the proposed membership meeting to the members of the corporation under IC 23-17-10-5. The notice must state that the purpose of the meeting is to consider the plan, and the notice must contain or be accompanied by a copy or summary of the plan.

(f) If the executive committee of the authority seeks to have the plan approved by the board of directors of the authority at a meeting of the board of directors, the authority shall give notice of the meeting to the members of the board of directors at least thirty (30) days before the meeting. The notice must state that the purpose of the meeting is to consider the plan, and the notice must contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan must include a copy or summary of the articles of incorporation and bylaws that will be in effect after the merger and conversion take effect.

(g) An action taken at any time to propose, consider, approve, or adopt a merger and conversion or a plan of merger and conversion under this section is valid for purposes of this section.

Sec. 7. After a plan of merger is approved under section 6 of this chapter, the surviving corporation shall deliver to the secretary of state articles of merger that include the following:

(1) The plan.

(2) The following concerning the authority that will undergo merger and conversion into a domestic nonprofit corporation under the plan:

(A) If the approval of the members of the authority was not required for the merger, a statement to the effect that approval of the members was not required and a statement that the plan was approved by a sufficient vote of the board of directors and the executive committee of the authority.

(B) If the approval of the members of the authority was required for the merger, the following:

(i) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the plan, and the number of votes of each class undisputedly voting on the plan.

(ii) Either the total number of votes for and votes against

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the plan cast by each class entitled to vote separately on the plan, or the total number of undisputed votes cast for the plan by each class and a statement that the number of votes cast for the plan by each class was sufficient for approval by that class.

(3) The following concerning the corporation that will be the surviving corporation after a merger under this chapter:

(A) If the approval of the plan by a person other than the board of directors or members of the corporation is required, a statement that the approval was obtained.

(B) If the approval of the plan by the members of the corporation was not required, a statement to the effect that approval of the members was not required and a statement that the plan was approved by a sufficient vote of the board of directors.

(C) If the approval of the plan by the members of the corporation was required, the following:

(i) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the plan, and the number of votes of each class undisputedly voting on the plan.

(ii) Either the total number of votes for and votes against the plan cast by each class entitled to vote separately on the plan, or the total number of undisputed votes cast for the plan by each class and a statement that the number of votes cast for the plan by each class was sufficient for approval by that class.

Sec. 8. (a) When a merger and conversion under this chapter take effect, the following occur:

(1) An authority that is a party to the merger and conversion merges into the surviving corporation and the separate existence of the authority ceases.

(2) The surviving corporation has all of the rights, privileges, immunities, and powers and is subject to all the duties, restrictions, penalties, and liabilities of a nonprofit corporation organized under IC 23-17.

(3) The surviving corporation:

(A) does not have the rights, privileges, immunities, and powers; and

(B) is not subject to the duties, restrictions, penalties, and liabilities;

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of an authority, including, without limitation, those provided under IC 36-12-8 or IC 36-12-9.

(4) The title to real property and other property owned by each party to the merger is vested in the surviving corporation without reversion or impairment, subject to any conditions to which the property was subject before the merger.

(5) Subject to subdivision (3), the surviving corporation has all of the liabilities and obligations of each party to the merger.

(6) A proceeding pending against a party to the merger may be continued as if the merger and conversion had not occurred, or the surviving corporation may be substituted in the proceeding for the party whose existence ceased.

(7) The articles of incorporation and bylaws of the surviving corporation are amended or restated to the extent provided in the plan.

(b) After a merger and conversion take effect under this chapter, any terms of the plan that are not included in the articles of incorporation are considered to be contract rights only and are not part of the governing document of the corporation.

Sec. 9. A nonprofit corporation organized under IC 23-17 that is a party to a merger with an authority under this chapter shall comply with the applicable requirements of IC 23-17-19 relating to mergers except when those requirements are inconsistent with this chapter.

Sec. 10. (a) The secretary of state shall approve or disapprove articles of merger filed under this chapter after first making the examinations or investigations the secretary of state considers necessary to determine whether the proposed merger and conversion is lawful.

(b) If the secretary of state approves the articles of merger:

- (1) the approval is conclusive proof that the parties to the merger satisfied all conditions precedent to the merger; and
- (2) the effective date of the merger and conversion is the date of the filing of the articles of merger, unless a delayed effective date is specified in the articles.

Sec. 11. (a) After a merger and conversion under this chapter become effective, the surviving corporation resulting from the merger and conversion may file for record a file stamped copy of the articles of merger with the county recorder of each county in which is located real property:

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(1) that, when the merger and conversion became effective,
was owned by a merging entity; and

(2) the title to which is transferred by the merger and
conversion.

(b) If a plan sets forth amendments to the articles of
incorporation of the surviving corporation that change the
surviving corporation's corporate name, the surviving corporation
may file for record a file stamped copy of the articles of merger
with the county recorder of each county in which is located real
property that was owned by the surviving corporation when the
merger and conversion became effective.

(c) A failure to record under this section does not affect the
validity of:

(1) a merger and conversion under this chapter; or

(2) the change in corporate name of a surviving corporation
described in subsection (b).

SECTION 3. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Small Business and Economic Development, to which was referred House Bill 1372, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

RESKE, Chair

Committee Vote: yeas 12, nays 0.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1372 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 36-12-2-25, AS ADDED BY P.L.1-2005, SECTION 49, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 25. (a) The residents or real property taxpayers of the library district taxed for the support of the library may use the facilities and services of the public library without charge for library or related purposes. However, the library board may:

- (1) fix and collect fees and rental charges; and
- (2) assess fines, penalties, and damages for the:
 - (A) loss of;
 - (B) injury to; or
 - (C) failure to return;

any library property or material.

(b) A library board may issue local library cards to:

- (1) residents of the library district; or
- (2) Indiana residents who are not residents of the library district;

who apply for the cards.

(c) Except as provided in ~~subsection~~ **subsections (d) and (e)**, a library board must set and charge a fee for a local library card issued under subsection (b)(2). The minimum fee that the board may set under this subsection is the greater of the following:

- (1) The library district's operating fund expenditure per capita in the most recent year for which that information is available in the Indiana state library's annual "Statistics of Indiana Libraries".
- (2) Twenty-five dollars (\$25).
- (d) A library board may charge a reduced fee or not charge a fee for

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a local library card under subsection (c) that is issued to an Indiana resident who is:

- (1) a student enrolled in a public school corporation that is located at least in part in the library district; and
- (2) not a resident of the library district.

(e) A library board may charge a reduced fee or not charge a fee for a local library card under subsection (c) that is issued to an Indiana resident who is a student enrolled in a nonpublic school that is located at least in part in the library district."

Page 2, line 41, after "that" delete "that".

Page 3, line 9, after "that" delete "that".

Renumber all SECTIONS consecutively.

(Reference is to HB 1372 as printed February 13, 2009.)

THOMPSON

COMMITTEE REPORT

Madam President: The Senate Committee on Local Government, to which was referred House Bill No. 1372, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 4, between lines 18 and 19, begin a new paragraph and insert:

"(g) An action taken at any time to propose, consider, approve, or adopt a merger and conversion or a plan of merger and conversion under this section is valid for purposes of this section."

and when so amended that said bill do pass.

(Reference is to HB 1372 as reprinted February 17, 2009.)

LAWSON C, Chairperson

Committee Vote: Yeas 7, Nays 0.

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